

DATE: July 18, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-12655

## **DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc E. Curry, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant was found guilty of Professional Misconduct and disbarred from the practice of law by a state Supreme Court in 2000. Applicant knowingly gave false information to the Government as to his past drug abuse when he executed his August 2001 Security Clearance Application (SCA). Applicant owes debts to at least 37 creditors in an amount of more than \$300,000. Applicant has taken no action to resolve this financial situation. Clearance is denied.

### **STATEMENT OF THE CASE**

On March 14, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline E (Personal Conduct) and Guideline F (Financial Considerations) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated April 30, 2002, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On March 11, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant had until April 18, 2003, to file a response to the FORM, but he failed to do file a response. The case was assigned to me on April 28, 2003.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline E (Personal Conduct)

and Guideline F (Financial Considerations) of the Directive. The SOR contains two allegations, 1.a. and 1.b., under Guideline E, and 37 allegations, 2.a. through 2.kk, under Guideline F. Applicant admitted all of the SOR allegations except for 1.b. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, and the documents, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant is a 50 year old engineer, employed by a defense contractor. He previously worked for several years as an attorney. He is divorced.

### **PERSONAL CONDUCT**

Applicant, who was previously employed as an engineer, became an attorney and opened up his own law practice in 1995. On November 17, 2000, Applicant was found guilty of Professional Misconduct and disbarred from the practice of law by the Supreme Court of his state. The four counts that were alleged against Applicant and ultimately established in the default proceeding included: failing to diligently represent his clients, failing to communicate with his clients, failing to deliver to clients property of which they had a right and failing to respond to the Office of Chief Disciplinary Counsel. (Government Exhibit 8.)

When Applicant completed a SCA on December 10, 1999, he answered "No" to question 27 which asks, "**YOUR USE OF ILLEGAL DRUGS AND DRUG ACTIVITY-ILLEGAL USE OF DRUGS**-Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana . . . or prescription drugs?"

In a signed, sworn statement made to the Defense Security Service on November 9, 2000, Applicant admitted, without any equivocation and with significant detail, that while on a boating trip in Illinois in 1995, he took some puffs of a marijuana cigarette, because he was trying to fit in and do some business with the people on the boat. (Government Exhibit 8.)

In Applicant's response to the SOR, regarding his past marijuana usage, he stated, "I do not remember using drugs on the night in question."

Based on this marijuana usage, Applicant's proper response to question 27 should have been "yes." Not only did Applicant knowingly give false information to the Government when he completed his SCA, but in his response to the SOR, he also was not honest or truthful by claiming he did not recall using drugs in 1999, which directly contradicted his 2000 statement to the DSS.

### **FINANCIAL CONSIDERATIONS**

Applicant has a troubling, history of financial difficulties. As stated above, Applicant admitted to owing all 37 debts listed under Guideline F in the SOR in an amount of more than \$300,000, which includes over \$5,000 in child support, over \$18,000 to the IRS for past Federal income taxes and more than \$2,000 to his state for past state income taxes. These financial problems occurred primarily as a result of Applicant's failed law practice, the dissolution of his marriage, numerous litigation in which he was a party and other lifestyle problems. Applicant has taken no action to resolve this financial situation. He stated that he does not plan to pay off these debts but plans to file a petition for bankruptcy sometime after the conclusion of this security clearance process. (Government Exhibit 6.)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct;

(8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

### **Guideline E - Personal Conduct:**

E2.A5.1.1. *The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

E2.A5.1.2.5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

E2.A5.1.3. Conditions that could mitigate security concerns include:

E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

### **Guideline F - Financial Considerations**

E2.A6.1.1. *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

>E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations.

E2.A6.1.2.3 Inability or unwillingness to satisfy debts.

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).

### **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets

that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to guidelines E and F:

With respect to Guideline E, the evidence establishes that Applicant violated many of the ethical and fiduciary requirements of his position as an attorney, which resulted in the extremely serious consequence of his disbarment by the Supreme Court of his state.

Additionally, under Guideline E, the evidence establishes that Applicant intentionally provided false material information to the Government in response to a question on the SCA he executed in December 1999. The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he nevertheless possesses the judgment, reliability and trustworthiness required of clearance holders. In this case, Applicant's falsification of his SCA regarding his usage of drugs was compounded by his untruthful response to the SOR, wherein he denied being aware of his drug usage.

Applicant's failure to offer any independent evidence indicating that he has reformed and is now reliable and trustworthy, precludes a finding that it is now clearly consistent with the national interest to grant him access to classified information. I resolve Guideline E against Applicant.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I conclude that DC E2.A5.1.2.2. applies because of the deliberate omission of his drug usage from a SCA. DC E2.A5.1.2.5. also applies because of Applicant's failure to follow the rules and requirements of the practice of law, which ultimately resulted in his disbarment. No Mitigating Conditions (MC) apply.

With respect to Guideline F, the Government has proven that Applicant has had a history of financial difficulties and established its case under Guideline F. The record evidence shows Applicant has an extremely large number of creditors and long overdue debts, and Applicant has taken no steps to resolve this very serious problem.

Applicant's overall conduct pertaining to his financial obligations falls within Financial Considerations Disqualifying Condition (DC) E2.A6.1.2.1., and DC E2.A6.1.2.3. because of Applicant's history of not meeting financial obligations and his inability and unwillingness to satisfy his debts. Regarding Mitigating Condition (MC) E2.A6.1.3.3, which regards debts that result from circumstances beyond the person's control, I find it not applicable to this case. While Applicant's indebtedness was partially due to circumstances beyond his control, specifically the problems of his divorce, the majority of Applicant's debts occurred as a result of his own conduct.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

**Paragraph 1, Personal Conduct, Guideline E: Against the Applicant**

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

**Paragraph 2, Financial Considerations, Guideline F: Against the Applicant**

Subparagraph 2.a. through 2kk: Against the Applicant

**DECISION**

In light of all the circumstances and facts presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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Martin H. Mogul

Administrative Judge